

Securities and Exchange Commission

§ 270.6c-3

(3) The term *Section 3(c)(7) Company* means a company that would be an investment company but for the exclusion provided by section 3(c)(7) of the Act [15 U.S.C. 80a-3(c)(7)].

(4) The term *Transferee* means a Section 3(c)(1) Transferee or a Qualified Purchaser Transferee, in each case as defined in paragraph (b) of this section.

(5) The term *Transferor* means a Section 3(c)(1) Transferor or a Qualified Purchaser Transferor, in each case as defined in paragraph (b) of this section.

(b) Beneficial ownership by any person ("Section 3(c)(1) Transferee") who acquires securities or interests in securities of a Section 3(c)(1) Company from a person other than the Section 3(c)(1) Company shall be deemed to be beneficial ownership by the person from whom such transfer was made ("Section 3(c)(1) Transferor"), and securities of a Section 3(c)(7) Company that are owned by persons who received the securities from a qualified purchaser other than the Section 3(c)(7) Company ("Qualified Purchaser Transferor") or a person deemed to be a qualified purchaser by this section shall be deemed to be acquired by a qualified purchaser ("Qualified Purchaser Transferee"), provided that the Transferee is:

- (1) The estate of the Transferor;
- (2) A Donee; or

(3) A company established by the Transferor exclusively for the benefit of (or owned exclusively by) the Transferor and the persons specified in paragraphs (b)(1) and (b)(2) of this section.

[62 FR 17529, Apr. 9, 1997]

§ 270.5b-1 Definition of "total assets."

The term *total assets*, when used in computing values for the purposes of sections 5 and 12 of the Act, shall mean the gross assets of the company with respect to which the computation is made, taken as of the end of the fiscal quarter of the company last preceding the date of computation. This section shall not apply to any company which has adopted either of the alternative methods of valuation permitted by § 270.2a-1.

[Rule N-5B-1, 6 FR 5920, Nov. 22, 1941]

§ 270.5b-2 Exclusion of certain guarantees as securities of the guarantor.

(a) For the purposes of section 5 of the act, a guarantee of a security shall not be deemed to be a security issued by the guarantor: *Provided*, That the value of all securities issued or guaranteed by the guarantor, and owned by the management company, does not exceed 10 percent of the value of the total assets of such management company.

(b) Notwithstanding paragraph (a) of this section, for the purposes of section 5 of the Act, a guarantee by a railroad company of a security issued by a terminal company, warehouse company, switching company, or bridge company, shall not be deemed to be a security issued by such railroad company: *Provided*:

(1) The security is guaranteed jointly or severally by more than one railroad company; and

(2) No one of such guaranteeing railroad companies directly or indirectly controls all of its co-guarantors.

(c) For the purposes of section 5 of the Act, a lease or other arrangement whereby a railroad company is or becomes obligated to pay a stipulated annual sum of rental either to another railroad company or to the security holders of such other railroad company shall not be deemed in itself a guarantee.

[Rule N-5B-2, 10 FR 581, Jan. 16, 1945]

§ 270.6b-1 Exemption of employees' securities company pending determination of application.

Any employees' securities company which files an application for an order of exemption under section 6(b) of the Act (54 Stat. 801; 15 U.S.C. 80a-6) shall be exempt, pending final determination of such application by the Commission, from all provisions of the Act applicable to investment companies as such.

[Rule N-6B-1, 6 FR 6126, Dec. 2, 1941]

§ 270.6c-3 Exemptions for certain registered variable life insurance separate accounts.

A separate account which meets the requirements of paragraph (a) of Rule 6e-2 (17 CFR 270.6e-2) or paragraph (a) of Rule 6e-3(T) (17 CFR 270.6e-3(T)) and registers as an investment company

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under section 8(a) of the Act (15 U.S.C. 80a-8(a)), and the investment adviser, principal underwriter and depositor of such separate account, shall be exempt from the provisions of the Act specified in paragraph (b) of Rule 6e-2 or paragraph (b) of Rule 6e-3(T), except for sections 7 (15 U.S.C. 80a-7) and 8(a) of the Act, under the same terms and conditions as a separate account claiming exemption under Rule 6e-2 or Rule 6e-3(T).

(Secs. 6(c); 15 U.S.C. 80a-6(C) and 38(a))

[49 FR 49228, Dec. 3, 1984]

§ 270.6c-6 Exemption for certain registered separate accounts and other persons.

(a) As used in this section,

(1) *Revenue Ruling* shall mean Revenue Ruling 81-225, 1981-41 I.R.B. (October 13, 1981), issued by the Internal Revenue Service on September 25, 1981.

(2) *Existing separate account* shall mean a separate account which is, or is a part of, a unit investment trust registered under the Act, engaged in a continuous offering of its securities on September 25, 1981.

(3) *Existing portfolio company* shall mean a registered open-end management investment company, engaged in a continuous offering of its securities on September 25, 1981, all or part of whose securities were owned by an existing separate account on September 25, 1981.

(4) *New portfolio company* shall mean any registered open-end management investment company the shares of which will be sold to one or more registered separate accounts for the purpose of minimizing the impact of the Revenue Ruling on the contractowners of an existing separate account, which new portfolio company has the same:

(i) Investment objectives,

(ii) Fundamental policies, and

(iii) Voting rights as the existing portfolio company and has an advisory fee schedule, including expenses assumed by the adviser, that is at least as advantageous to the new portfolio company as was the fee schedule of the existing portfolio company.

(5) *New separate account* shall mean a separate account which

(i) Is, or is a part of, a unit investment trust registered under the Act;

(ii) Is intended to minimize the impact of the Revenue Ruling on the contractowners of an existing separate account;

(iii) Invests solely in one or more new portfolio companies;

(iv) Has the same

(A) Sales loads,

(B) Depositor, and

(C) Custodial arrangements

As the existing separate account; and

(v) Has

(A) Asset charges,

(B) Administrative fees, and

(C) Any other fees and charges (not including taxes) that correspond only to fees of the existing separate account and are no greater than those corresponding fees.

(b) Any order of the Commission under the Act, granted to an existing separate account on or before September 25, 1981, shall remain in full force and effect notwithstanding that the existing separate account invests in one or more new portfolio companies in lieu of, or in addition to, investing in one or more existing portfolio companies; *Provided*, That:

(1) No material changes in the facts upon which the order was based have occurred;

(2) All representations, undertakings, and conditions made or agreed to by the existing separate account, and any other person or persons, other than any existing portfolio company, in connection with the issuance of the order are, and continue to be, applicable to the existing separate account and any such other person or persons, unless modified in accordance with this section;

(3) All representations, undertakings, and conditions made or agreed to by the existing portfolio company in connection with the issuance of the order are made or agreed to by the new portfolio company, unless modified in accordance with this section; and

(4) Part II of the Registration Statement under the Securities Act of 1933 of the existing separate account

(i) Indicates that the existing separate account is relying upon paragraph (b) of this section,

(ii) Lists the Investment Company Act release numbers of any orders upon which the existing separate account intends to rely, and